

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

PLAINTIFFS,

v.

U.S. DEPARTMENT OF
TRANSPORTATION, et al.,

DEFENDANTS.

NO. 2:25-cv-00848

DECLARATION OF WILL TOOR
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

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ATTORNEY GENERAL OF WASHINGTON
Environmental Protection Division
800 Fifth Avenue STE 2000
Seattle, WA 98104
206-464-7744

1 I, Will Toor, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that
 2 the following is true and correct:

3 1. I am a resident of the State of Colorado. I am over the age of 18 and have
 4 personal knowledge of all the facts stated herein, except to those matters stated upon
 5 information and belief; as to those matters, I believe them to be true. If called as a witness, I
 6 could and would testify competently to the matters set forth below.
 7

8 2. As Executive Director of the Colorado Energy Office (“CEO”), I submit this
 9 declaration in support of this preliminary injunction to prevent the Federal Highway
 10 Administration’s (“FHWA”) rescission of approved State Plans and subsequent categorical
 11 suspension of hundreds of millions of dollars of Congressionally authorized and appropriated
 12 federal funding designed for the National Electric Vehicle Infrastructure (“NEVI”) Formula
 13 Program.
 14

15 **Personal Background and Qualifications**

16 3. I hold a Bachelor of Science in Physics from Carnegie Mellon University and a
 17 Ph.D. in Physics from the University of Chicago. I spent 12 years as Director of the University
 18 of Colorado Environmental Center, where I developed campus sustainability programs in the
 19 areas of solid waste, building energy use, and transportation planning. I served as the Mayor of
 20 Boulder for six years where I developed Boulder’s community transit network and unlimited
 21 access transit pass program. I went on to chair the Denver Regional Council of Governments
 22 (“DRCOG”). The DRCOG is the regional planning commission for the Denver metro area and
 23 works with the Colorado Department of Transportation (“CDOT”) and other entities to prepare
 24 transportation plans and programs. I also served as a Boulder County Commissioner for eight
 25
 26

1 years. As a Commissioner, I led the effort to create and adopt a countywide Sustainable Energy
 2 Plan, the BuildSmart green building code, the EnergySmart program, and the ClimateSmart
 3 Loan Program. I then became the Transportation Program Director at the Southwest Energy
 4 Efficiency Project (“SWEEP”). SWEEP promotes energy efficiency, clean transportation, and
 5 beneficial electrification in several states in the Southwest region. Finally, in January 2019, I
 6 was appointed by Governor Jared Polis to be the Executive Director of the Colorado Energy
 7 Office (the “Energy Office”). I have served in that role consistently since 2019.

9 4. As Executive Director, I guide the Energy Office in meeting its statutory
 10 mission to:

- 11 (a) Support Colorado’s transition to a more equitable, low-carbon, and clean energy
- 12 economy and promote resources that reduce air pollution and greenhouse gas
- 13 [“(GHG)”] emissions, including pollution and emissions from electricity
- 14 generation, buildings, industry, agriculture, and transportation;
- 15 (b) Promote economic development and high quality jobs in Colorado through
- 16 advancing clean energy, transportation electrification, and other technologies that
- 17 reduce air pollution and [GHG] emissions, including helping to finance those
- 18 investments;
- 19 (c) Promote energy efficiency;
- 20 (d) Promote an equitable transition toward zero emission buildings;
- 21 (e) Promote an equitable transition to transportation electrification, zero emission
- 22 vehicles, transportation systems, and land use patterns that reduce energy use and
- 23 [GHG] emissions;
- 24 (f) Increase energy security;
- 25 (g) Support lower long-term consumer costs and support reduced energy cost
- 26 burden for lower-income Coloradans; and
- (h) Protect the environment and public health.¹

22 I. The National Electric Vehicle Infrastructure Program

23 5. The Infrastructure Investment and Jobs Act (“IIJA”) allocated \$5 billion over
 24 federal fiscal years 2022 - 2026 for the NEVI Formula Program to fund strategic deployment

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 26 ¹ Colo. Rev. Stat. § 24-38.5-101.

1 of electric vehicle (“EV”) charging infrastructure.² The Federal Highway Administration
 2 (“FHWA”) administers the NEVI program. Each state is required to submit a State Electric
 3 Vehicle Infrastructure Deployment Plan (“State Plan”) for each fiscal year describing how the
 4 state intends to use the NEVI funds.

5
 6 6. Since the IIJA set up the NEVI program as a formula program, Colorado was
 7 formulaically allocated a certain amount of money for each year of the program. Colorado was
 8 allocated \$8,368,277 for year 1 (federal fiscal year (“FFY”) 2022), \$12,042,045 for year 2
 9 (FFY 2023), \$12,042,129 for year 3 (FFY 2024), \$12,042,139 for year 4 (FFY 2025), and
 10 12,042,164 for year 5 (FFY 2026).³ Thus, Colorado, through CDOT, was apportioned a total of
 11 \$56,536,754 of federal funding over the five years covered by the NEVI program.⁴

12
 13 7. CDOT established an interagency agreement with CEO in March of 2023. This
 14 agreement provides that CEO will administer the NEVI funds while CDOT will support the
 15 implementation process and ensure the program adheres to NEVI guidelines.⁵

16 8. Colorado spent significant resources to develop its State Plans, which were
 17 provided and approved for federal fiscal years 2022-2023, 2023-2024, and 2024-2025.
 18 Colorado’s State Plans ensure the effective and efficient use of the funds to further Congress’s
 19 stated policy objectives to allow states to strategically deploy EV charging infrastructure. CEO
 20 and CDOT developed the State Plans with the input of a broad range of stakeholders.
 21

22
 23 ² Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135. Stat. 1351, 1421-22 (2021).

24 ³ U.S. Department of Transportation, Federal Highway Administration, Infrastructure Investment and Jobs Act,
 Electric Vehicles, *5-year National Electric Vehicle Infrastructure Funding by State*,
https://www.fhwa.dot.gov/infrastructure-investment-and-jobs-act/evs_5year_nevi_funding_by_state.cfm.

25 ⁴ *Id.*

26 ⁵ Colorado Department of Transportation, *Colorado Plan for the National Electric Vehicle Infrastructure (NEVI) Program*, 7 (2023 Update - Rev.), <https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf>.

1 9. The FHWA approved each of Colorado’s State Plans for implementation. The
 2 State Plans establish Colorado’s overall approach to the investment of the NEVI program
 3 funding with the intent of building a national network of EV fast-charging stations and include
 4 a description of public engagement, plan vision and goals, the status of contracting and awards,
 5 infrastructure deployment, and implementation.
 6

7 10. Colorado relied on the FHWA’s approval of its first three State Plans and the
 8 formulaic allocation of the NEVI program to begin awarding grants and contracting with
 9 grantees. As previously noted, CEO contracted with CDOT through an interagency agreement
 10 to administer the funding for the first four years of the program, FFY 2022-2025, which totaled
 11 \$44,494,590.
 12

13 11. Of the \$44,494,590, Colorado has contracted with grantees for approximately
 14 \$18 million in work to implement Colorado’s State Plan. An additional \$15 million is in the
 15 pending awards stage, meaning that CEO held a formal solicitation, reviewed and selected
 16 winning applications, and sent award letters. However, only \$8 million has been obligated in
 17 the Financial Management Information System (“FMIS”), meaning that only \$8 million has
 18 been requested and approved in FMIS. This leaves a gap of \$10 million that has been
 19 contracted to grantees but not obligated by FHWA. It also leaves a further gap of the \$15
 20 million of projects that have been awarded but not contracted.
 21

22 **II. Unleashing American Energy**

23 12. On January 20, 2025, President Trump issued an Executive Order (“EO”)
 24 entitled Unleashing American Energy. Section 7(a) of the EO directs all agencies to
 25 “immediately pause the disbursement of funds appropriated through” the IJA, “including but
 26

1 not limited to funds for electric vehicle charging stations made available through the [NEVI]
 2 Program.”

3 13. On February 6, 2025, the FHWA issued a letter that rescinded the current NEVI
 4 Formula Program Guidance, suspended approval of State Plans, and stated that, “effective
 5 immediately, no new obligations may occur under the NEVI Formula Program until the
 6 updated final NEVI Formula Program Guidance is issued and new State plans are submitted
 7 and approved.”⁶

9 14. CEO is now unable to access its apportioned NEVI funds beyond the first \$8
 10 million obligated before February 6th to carry out the contracts it has entered into in reliance
 11 on State Plan approval and has pending with grantees. CEO is also unable to pursue entering
 12 further contracts to meet the goals in its State Plans because of the unavailability of the NEVI
 13 funding, or to finalize the \$15 million of projects that have been awarded but not contracted.

15 **III. Colorado Law and Policy Regarding Electric Vehicles**

16 15. The purpose of the NEVI program is to fund strategic deployment of EV
 17 charging infrastructure. Colorado has extensive law and policy regarding EVs that would be
 18 impacted by the loss of NEVI funding.

19 **A. Statutory Emissions Reduction Goals**

20 16. In 2019, the Colorado legislature officially recognized that Colorado is
 21 experiencing harmful climate impacts, and therefore set statewide greenhouse reduction goals
 22 of at least a 26% reduction in statewide GHG emissions by 2025, 50% reduction in GHG
 23

24
 25 ⁶ Memorandum from Emily Biondi, Associate Administrator, Office of Planning, Environment and Realty, U.S.
 26 Department of Transportation, Federal Highway Administration to State Department of Transportation Directors
 (Feb. 6, 2025), <https://www.fhwa.dot.gov/environment/nevi/resources/state-plan-approval-suspension.pdf>.

emissions by 2030, and 90% reduction in GHG emissions by 2050 relative to a 2005 baseline.⁷ In 2023, Colorado’s General Assembly updated the economy-wide emissions reduction targets to a 65% reduction by 2035, 75% reduction by 2040, 90% by 2045 and net zero statewide GHG pollution by 2050.⁸

17. Achieving these goals will require a broad-based strategy to reduce emissions across multiple sectors, such that each project delayed or foregone as a result of missing financing will negatively impact the State’s ability to achieve these reductions. Importantly, the transportation sector is one of the five largest sources of GHG emissions, with transportation electrification identified in Colorado’ State Plans as one of the most significant tools to decarbonize the sector.⁹ Mobile sources are one of the largest contributors to GHG emissions and criteria air pollutants throughout Colorado. Therefore, EVs are essential to decreasing transportation emissions.

18. The Colorado Medium- and Heavy- Duty (“M/HD”) Vehicle Study, developed by M.J. Bradley & Associates for CEO in collaboration with the Colorado Department of Public Health (“CDPHE”) and CDOT, found that, if Colorado pursues strategies that support an accelerated transition to M/HD EVs, it could reduce the State’s M/HD GHG emissions

⁷ Colo. Rev. Stat. § 25-7-102(2)(g) (2019); *see also* Colo. Rev. Stat. § 25-7-103(22.5) (defining “statewide greenhouse gas pollution”).

⁸ Colo. Rev. Stat. § 25-7-102(2)(g)(I)(C)-(E) (2023) (additional targets for 2035, 2040, and 2045); Colo. Rev. Stat. § 25-7-102(2)(g)(I)(F) (2023) (increasing the target for 2050 from 90% reduction in statewide GHGs to 100% reduction).

⁹ Colorado Department of Transportation, *Colorado Plan for the National Electric Vehicle Infrastructure (NEVI) Program*, 9 (2023 Update - Rev.), <https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf>; *see also* Governor Jared Polis, *Colorado Greenhouse Gas Pollution Reduction Roadmap*, 133-140 (Jan. 14, 2021), https://drive.google.com/file/d/1jzLvFcrDryhhs9ZkT_UXkQM_0LiiYZfq/view.

1 between 45% and 59%, NOx emissions between 54% and 93%, and particular matter
 2 emissions between 53% and 68% annually by 2050 from the baseline.¹⁰

3 19. Therefore, an important aspect of Colorado’s climate policy is to reduce GHG
 4 pollution from transportation by supporting the widespread adoption of EVs. For this reason,
 5 Colorado has a multitude of regulations and agency policy directives that work towards mass
 6 EV usage in Colorado, which will be discussed below. Without funding for the NEVI program,
 7 achieving these directives would be challenging due to the infrastructure required to transition
 8 towards widespread electrification of light duty vehicles throughout all of Colorado.
 9

10 **B. Statutes and Regulations**

11 20. In 2018, Colorado’s Air Quality Control Commission adopted Regulation 20
 12 (Colorado Clean Cars and Trucks). This regulation was initially adopted to reduce vehicle
 13 emissions in Colorado by implementing a low emission vehicle (“LEV”) program.¹¹ This
 14 required all new light- and medium-duty vehicles available for sale in Colorado to be certified
 15 as LEVs, which means the vehicles meet emission standards for criteria pollutants and GHGs.
 16 The regulation was updated in 2019 to include a zero-emission vehicle (“ZEV”) program based
 17 upon the transportation sector’s major contribution to air pollution.¹² The ZEV standard
 18 requires individual automakers to make an increasing percentage of light-duty zero emission
 19 vehicles available for sale in Colorado.
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 21
 22

23 ¹⁰ MJB&A, *Colorado Medium- and Heavy- Duty (M/HD) Vehicle Study*, 117 (Sept. 2021),
 24 [https://coloradocleanair.org/wp-](https://coloradocleanair.org/wp-content/uploads/2021/10/CEO_Colorado_Medium_Heavy_Duty_Vehicle_Study_2021.pdf)
 25 [content/uploads/2021/10/CEO_Colorado_Medium_Heavy_Duty_Vehicle_Study_2021.pdf](https://coloradocleanair.org/wp-content/uploads/2021/10/CEO_Colorado_Medium_Heavy_Duty_Vehicle_Study_2021.pdf).

26 ¹¹ See 5 Colo. Code Regs. 1001-24:I.I (Nov. 15, 2018 Statement of Basis, Specific Statutory Authority and Purpose).

¹² See 5 Colo. Code Regs. 1001-24:I.II (Aug. 16, 2019 Statement of Basis, Specific Statutory Authority and Purpose).

21. Colorado’s regulations were updated again in April 2023, to include Advanced Clean Truck (“ACT”) standards for new, medium and heavy duty vehicles and Low Nitrogen Oxide (“Low NOX”) standards for new heavy duty vehicles.¹³ This helps ensure low and zero emission medium and heavy duty trucks are available in the Colorado market. Most recently, the regulation was updated in October 2023 to incorporate California’s Advanced Clean Cars II Standards for model years 2027-2032.¹⁴ This standard helps ensure that 82% of new light duty vehicles sold in Colorado are electric by model year 2032.¹⁵

22. Colorado also requires all electric public utilities to file a Transportation Electrification Plan (“TEP”) every three years that contains a program for regulated activities to support widespread transportation electrification.¹⁶ Public Service Company of Colorado (“Public Service”), Colorado’s largest utility, had their 2024-2026 TEP Plan approved by the Colorado Public Utilities Commission (PUC) in April of 2024.¹⁷

23. Colorado’s utilities rely on a mix of state and federal funding to accomplish the transportation electrification outlined in these plans. One of Public Service’s witnesses stated in their testimony:

[Public Service] expects the IIJA to work in concert with TEP program offerings to assist greater EV adoption, supporting the build out of the infrastructure needed to support a growing EV market, providing funding to communities as they look to make EV charging more readily available, and promoting the shift to clean transportation. More specifically [Public Service] understands that through the NEVI program Colorado will receive an allocation of funding in the amount of

¹³ See 5 Colo. Code Regs. 1001-24:I.IV (April 1, 2023 Statement of Basis, Specific Statutory Authority and Purpose).

¹⁴ See 5 Colo. Code Regs. 1001-24:I.V (Oct. 20, 2023 Statement of Basis, Specific Statutory Authority and Purpose).

¹⁵ See Colorado Department of Public Health & Environment, *Colorado Clean Cars*, <https://cdphe.colorado.gov/coloradocleancars>.

¹⁶ Colo. Rev. Stat. § 40-5-107(1)(a).

¹⁷ Xcel Energy, *Transportation Electrification Plan*, https://www.xcelenergy.com/company/rates_and_regulations/filings/transportation_electrification_plan/.

1 \$56.5 million over the next five years to support the construction of [DC Fast
2 Charging] stations along designated corridors.¹⁸

3 Public Service also stated that its entire TEP programming was designed with these federal
4 opportunities in mind.¹⁹

5 **C. Agency Policy Guidance**

6 24. CEO, in conjunction with other State agencies, developed a Greenhouse Gas
7 Pollution Reduction Roadmap (“Roadmap”) that was released in 2021 and which assessed the
8 ways Colorado could achieve its emission targets, and established a sector-based approach to
9 combating pollution.²⁰ The initial Roadmap identified transportation as the highest GHG
10 emitting sector in Colorado and set a goal of 12.7 million metric tons in transportation
11 emission reductions by 2030.²¹ This Roadmap was updated in 2024.²²

13 25. CEO has also released a 2018, a 2020, and most recently, a 2023 Electric
14 Vehicle Plan (“2023 EV Plan”). The 2023 EV Plan is a “guiding document intended to help
15 state agencies and stakeholders collaborate on shared strategies to accelerate EV adoption by
16 documenting recent progress, establishing a near-term vision, and committing to goals and
17 actions.”²³

18 26. The main goals of the 2023 EV Plan include:
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22 ¹⁸ Hearing Exhibit 101, Direct Testimony and Attachment of Jack W. Ihle on behalf of Public Service Company
of Colorado, filed with the Colorado Public Utilities Commission, in Proceeding No. 23A-0242E, 26:8-15 (May
15, 2023).

23 ¹⁹ *Id.* at 26:20-21.

24 ²⁰ Governor Jared Polis, *Colorado Greenhouse Gas Pollution Reduction Roadmap* (Jan. 14, 2021)
https://drive.google.com/file/d/1jzLvFcrDryhhs9ZkT_UXkQM_0LiiYZfq/view.

25 ²¹ *Id.* at 41, 133.

26 ²² Governor Jared Polis, *Colorado Greenhouse Gas Pollution Reduction Roadmap 2.0: Policy Priorities through*
2026 (Feb. 2024), https://drive.google.com/file/d/1ltnNkUsGx_7ZgpAR1LeFzLczQu7DRbZR/view.

²³ Colorado Energy Office, et al., *2023 Colorado EV Plan*, 3 (Mar. 2023),
https://drive.google.com/file/d/1R2WEarx6n2_pXXtd68tGV8ou6yrYoPMV/view.

- a. Increase adoption of EVs in the light-duty sector to 940,000 vehicles by 2030 by increasing the number of annual light-duty EV sales to 65,000 by 2025, increasing EV sales to at least 70% of new vehicle sales by 2030, and increasing adoption of EVs in the light-duty sector to approximately 2.1 million vehicles by 2035;
- b. Increase the number of charging ports awarded or installed to 1,700 DCFC and 5,800 public Level 2 by 2025, including awarding grants for at least 1,000 ports each year through 2025;
- c. Complete the implementation of the NEVI plan, fully expending Colorado's \$56.5 million allocation to construct DC fast charging ("DCFC") sites along federally designated EV corridors;
- d. Increase the number of Colorado Scenic and Historic Byways classified as electrified byways from three to 23 by the end of 2025.;
- e. Increase access to eBikes for low- and moderate-income Coloradans by providing grants, rebates, and tax credits for at least 10,000 new eBikes by 2025;
- f. Support 10 community driven electric mobility projects by 2025, either by providing grant funding or supporting community applications to other funding sources; and
- g. Reduce greenhouse gas emissions from State vehicles by at least 15% by June 2025.²⁴

²⁴ *Id.* at 5-7.

1 27. The 2023 EV Plan acknowledges that an important component of it is
2 leveraging new vehicle electrification investments from the federal government.²⁵

3 28. A robust charging network is essential to accomplishing Colorado’s EV goals.²⁶
4 For example, as of January 2024, there were more than 108,000 EVs on the road in Colorado
5 but less than 5,000 Level 2 and only 980 DCFC EV ports available for public use.²⁷

6 29. The suspension of NEVI funding will also impede Colorado’s 2022 Clean
7 Truck Strategy, which was developed by CEO, CDOT, and CDPHE. The primary objective of
8 this strategy is to “transition Colorado’s medium- and heavy-duty trucks to low- and zero-
9 pollution alternatives as quickly as possible”²⁸

10 30. The Clean Truck Strategy includes the following goals:

- 11 a. Establish a goal and transition plan for State agency fleets to achieve 100% zero
12 emission M/HD fleet vehicle purchases by 2040;
- 13 b. Increase adoption of zero emission M/HD vehicles to 35,000 on the road by
14 2030;
- 15 c. Convert public transit fleets across the State to 100% zero emission vehicles no
16 later than 2050, with an interim target of at least 1,000 zero-emission transit
17 vehicles by 2030;
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23 ²⁵ *Id.* at 12.

24 ²⁶ Colorado Department of Transportation, *Colorado Plan for the National Electric Vehicle Infrastructure (NEVI)*
25 *Program*, 8 (2023 Update - Rev.), [https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-](https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf)
26 [colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf](https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf).

²⁷ HB 24-1173, 74th Gen. Assemb., 2nd Reg. Sess. (Colo. 2024), § 1(1)(d).

²⁸ Colorado Energy Office, et al., *2022 Colorado Clean Truck Strategy*, 2 (2022),
[https://freight.colorado.gov/sites/freight/files/documents/Colorado%20Clean%20Truck%20Strategy%20-](https://freight.colorado.gov/sites/freight/files/documents/Colorado%20Clean%20Truck%20Strategy%20-%20Compliant.pdf)
[%20Compliant.pdf](https://freight.colorado.gov/sites/freight/files/documents/Colorado%20Clean%20Truck%20Strategy%20-%20Compliant.pdf).

- d. Support the adoption of 2000 electric school buses by 2027 and achieve 100% zero-emission buses on the road by 2035;
- e. Plan for and support public, utility, public-private partnership, and private sector funding for M/HD charging and hydrogen fueling infrastructure to meet clean truck and bus adoption goals.²⁹

31. Finally, investments in Colorado’s EV charging network supported by NEVI funding are also needed to support the State’s goals for electrifying the State vehicle fleet and reducing greenhouse gas emissions in the State fleet by at least 32% over the FY 2019 baseline by FY 2034.³⁰

IV. Impact of Loss of NEVI Funding on Colorado

A. Impact on Colorado’s EV Goals

32. The loss of NEVI funding would impact Colorado’s ability to meet all the goals and regulations outlined above. Specifically, the lack of NEVI funding would significantly impede Colorado’s ability to develop a statewide network of charging stations, which is necessary to promote EV adoption as required by Colorado’s legislature and executive branches. CEO performed a residential survey that found the top barriers to EVs are “range anxiety, cost, lack of information, and a perceived lack of public charging.”³¹ Sixty eight percent of surveyed non-EV owners were worried that an EV would run out of charge before they reached their destination.³²

²⁹ *Id.* at 4.

³⁰ Governor Jared Polis, Executive Order D 2025 003, 2 (Apr. 22, 2025), <https://drive.google.com/file/d/1TD6OKgt3vISJyyMFt3qnnXwdbOldGWGF/view>.

³¹ ESource, 2023 Colorado Residential EV Survey Results, 6 (2023), https://drive.google.com/file/d/1QpHwwuwpBGq-LApreTypWBGsurJm9_5/view.

³² *Id.* at 140.

33. Without NEVI funding, Colorado will also be unable to construct new charging locations within identified charging gaps along Colorado's federally designated alternative fuel corridors; expand existing charging stations along Colorado's federally designated alternative fuel corridors by adding additional chargers and increasing power as required by NEVI standards; construct additional charging locations in areas where charging infrastructure already exists but is insufficient to meet the growing EV market demand; and construct charging infrastructure to support the electrification of the M/HD vehicle market, as outlined and approved in Colorado's FY2024 NEVI Plan.³³

34. As of April 7, 2025, there were 178,546 EVs registered in Colorado, and 30.94 EVs per 1000 people.³⁴ This is a vast increase from July 7, 2023, when there were 86,017 electric vehicles registered in Colorado and 15.03 EVs per 1,000 people.³⁵ EVs accounted for approximately 26.4% of new light duty vehicle registrations in Colorado in the fourth quarter of 2024.³⁶ A market analysis suggests that the growth in EV sales is on track to achieve the State's 2030 goals of 940,000 EVs on the road.³⁷ However, Colorado's charging station network is not nearly sufficient to meet the needs of this many EVs.

³³ Colorado Department of Transportation, *Colorado Plan for the National Electric Vehicle Infrastructure (NEVI) Program*, 25-26 (2023 Update - Rev.), <https://www.codot.gov/programs/innovativemobility/assets/2023-update-of-colorado-plan-for-the-national-electric-vehicle-infrastructure-nevi-program.pdf>.

³⁴ Colorado Energy Office, *Electric Vehicle Charging in Colorado*, <https://energyoffice.colorado.gov/ev-charging-in-colorado> (last visited on May 1, 2025).

³⁵ Drive Electric Colorado, *Quarterly EVs on the Road in Colorado*, <https://driveelectriccolorado.org/quarterly-evs-on-the-road-in-colorado/>.

³⁶ Alliance for Automotive Innovation, *Get Connected Electric Vehicle Quarterly Report: Fourth Quarter*, 8 (2024), <https://www.autosinnovate.org/posts/papers-reports/Get%20Connected%20EV%20Quarterly%20Report%202024%20Q4.pdf>.

³⁷ Governor Jared Polis, *Colorado Greenhouse Gas Pollution Reduction Roadmap 2.0: Policy Priorities through 2026*, 8 (Feb. 2024), https://drive.google.com/file/d/1ltNkUsGx_7ZgpARlLeFzLczQu7DRbZR/view.

35. Colorado needs charging infrastructure to support this increasing EV adoption, and is relying on NEVI as a significant funding source for necessary infrastructure. Survey results regarding the NEVI plan and future implementation showed that access to chargers is a top three consideration in terms of potential barriers to EV adoption.³⁸ Further, Colorado highlighted this very concern in legislation meant to encourage EV charging stations, stating that “[p]eople may forgo purchasing or driving an electric vehicle because they are concerned about the availability of charging stations.”³⁹

36. In order to support Colorado’s 2030 goal of having 940,000 EVs on the road, Colorado will need 4,841 public DCFC chargers installed by 2030.⁴⁰ Currently, Colorado has 1,190 DCFC ports.⁴¹

B. Impacts on Project and Grant Management

37. The uncertainty in funding is also harming Colorado’s ability to partner with private grant recipients, which is compounded by the possible loss of funds that were already contracted. This could have a chilling effect on future projects.

38. The rescission of the NEVI funds will challenge both the project management and program/grant management of these funds. On the project side, awardees are committing to capital intensive projects that require coordination across multiple parties, including investors, utilities, and local and state government. In order for these projects to proceed with

³⁸ Colorado Department of Transportation, *Colorado Plan for the National Electric Vehicle Infrastructure (NEVI) Program*, 10 (July 2022), https://www.codot.gov/programs/innovativemobility/assets/co_neviplan_2022_final-1.pdf.

³⁹ Colo. Rev. Stat. § 30-28-140(1)(a)(VII).

⁴⁰ Chih-Wei Hsu, et al., International Council on Clean Transportation, *Colorado charging infrastructure needs to reach electric vehicle goals*, 8 (Feb. 2021), <https://theicct.org/sites/default/files/publications/colorado-charging-infra-feb2021.pdf>.

⁴¹ Colorado Energy Office, *Electric Vehicle Charging in Colorado*, <https://energyoffice.colorado.gov/ev-charging-in-colorado> (last visited on May 1, 2025).

1 confidence and within their committed timelines, it is invaluable to have confidence that the
2 capital stack involved will be guaranteed. Uncertainty surrounding portions of the funding
3 undermines confidence in the ability to pursue projects, and these extensive delays are costly to
4 organizations who are looking to deploy quickly. Finally, interfering with project management,
5 such as by mobilizing contractors and then having to pull them back, can have cascading
6 effects with long term impacts on the ability to build these types of projects.
7

8 39. From a grant/program management perspective, Colorado has committed to
9 offering at least two funding rounds per year to ensure the timely rollout of the NEVI funding
10 and to accommodate market demands for the funds to facilitate charging infrastructure
11 throughout Colorado. Through our program and project planning efforts we have worked to
12 incentivize and encourage investments in “NEVI gap” areas throughout Colorado, and in
13 particular in rural parts of the State, where charging infrastructure didn’t previously exist. We
14 have awarded numerous sites that fill gaps in the network. Many of those projects are now on
15 hold as a result of the NEVI funding pause. This creates significant challenges as we look to
16 direct funding to remaining gap areas throughout the State.
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C. Impact on Climate Change

40. The loss of NEVI funding and subsequent impact on meeting Colorado’s electrification and emissions reduction goals hinders Colorado’s ability to mitigate the impacts of climate change on the State.

41. The Colorado General Assembly has found that climate change is already having negative impacts on the State of Colorado and its residents, including extreme weather, increased temperatures, wildfires, drought, and flooding.⁴²

42. The frequency of climate events has drastically increased over the past few decades. The National Centers for Environmental Information at the National Oceanic and Atmospheric Administration publishes statistics for natural disasters and climate events that have occurred in the State of Colorado.⁴³ From 1980–2025 (as of April 8, 2025), there have been 76 confirmed weather and climate disaster events in Colorado that each caused losses exceeding \$1 billion.⁴⁴ These events include severe storms, droughts, wildfires, flooding, winter storms, and freeze events.⁴⁵ During the period between 1980 and 2024 these events occurred on average 1.7 times per year.⁴⁶ In the most recent 3 years (2022–2024), the annual average has increased to 5.0 events per year.⁴⁷

⁴² Colo. Rev. Stat. § 25-7-102(2)(a)-(b).

⁴³ National Centers for Environmental Information, *Billion-Dollar Weather and Climate Disasters, Colorado Summary*, <https://www.ncei.noaa.gov/access/billions/state-summary/CO> (last visited April 30, 2025).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

43. Colorado has also been plagued by severe wildfires in recent years, which have been exacerbated by the worsening drought and rising temperatures.⁴⁸ The annual area burned by wildfires in Colorado, and adjacent areas of New Mexico and Wyoming, increased by over 300% from the 1984-2000 period to the 2001-2017 period.⁴⁹ The 20 largest fires in Colorado history have taken place since 2001, and 11 of those have occurred since 2016.⁵⁰ Recently, the 2021 Marshall Fire in Boulder County destroyed over 1,000 homes,⁵¹ causing over \$2 billion in damages, making it the 10th costliest wildfire in U.S. history.⁵²

44. Climate change has also caused unprecedented flooding throughout Colorado. Increasing heat and shorter winters are causing snowpack to melt earlier and quicker, which, combined with wildfire damages, are causing increasingly intense flooding.⁵³ Colorado has experienced, and is likely to continue to experience, floods similar to the catastrophic 2013 floods throughout the Front Range, during which nearly as much rain fell in Boulder County in a matter of days as the area typically receives in an entire year.⁵⁴ The flood caused extensive

⁴⁸ Carly Phillips, *The Vicious Climate-Wildfire Cycle* (Apr. 30, 2019), <https://blog.ucsusa.org/carly-phillips/the-vicious-climate-wildfire-cycle/>.

⁴⁹ Rebecca Bolinger, et al., *Climate Change in Colorado*, 67 (2024), <https://doi.org/10.25675/10217/237323>.

⁵⁰ Colorado Division of Fire Prevention & Control, *Historical Wildfire Information*, <https://dfpc.colorado.gov/sections/wildfire-information-center/historical-wildfire-information>.

⁵¹ Boulder County, *Marshall Fire Recovery Dashboard*, <https://bouldercounty.gov/disasters/wildfires/marshall/marshall-fire-recovery-dashboard/>.

⁵² Christian Murdock, *Official: 2021 Colorado wildfire losses surpass \$2 billion*, Associated Press (Oct. 27, 2022), <https://apnews.com/article/wildfires-business-fires-colorado-denver-20501c246da58c1a8da04500656f3ab5>.

⁵³ Shannon Mullane, *Snowmelt is swelling Colorado's rivers, but much more snow is still waiting in the high country*, The Colorado Sun (May 23, 2023), <https://coloradosun.com/2023/05/23/snowpack-spring-runoff-colorado-2023-river-update/>; Chrissy Esposito, *Climate Change Forces Local Leaders to Brace for Flooding*, Colorado Health Institute (Sept. 20, 2021), <https://www.coloradohealthinstitute.org/blog/climate-change-forces-local-leaders-brace-flooding>.

⁵⁴ See Andrew Freedman, *Flood-Ravaged Boulder, Colo., Sets Annual Rainfall Record*, Climate Central (Sept. 16, 2013), <https://www.climatecentral.org/news/flood-ravaged-boulder-colorado-sets-annual-rainfall-record-16481>.

1 damage, “with an estimated 19,000 homes damaged or destroyed, and at least 30 highway
2 bridges taken out by floodwaters.”⁵⁵

3 45. Additionally, studies predict that, by century’s end, ski mountains will
4 experience a majority of days in winter with above-freezing temperatures,⁵⁶ which will
5 drastically impact Colorado’s tourism industry and economy. Many Colorado mountains are
6 already seeing historic lows for snowfall and ski days⁵⁷ and future snow levels are projected to
7 decrease by 20-30% by the 2040s and 40-60% by the 2100s throughout the Western U.S.⁵⁸
8 Studies predict that, even with some large-scale emissions reductions, Colorado ski resorts
9 “could lose two to four weeks in the ski season, as well as \$650 million annually, by 2050.”⁵⁹
10 Other tourist attractions like the Denver Zoo have already been impacted by climate change.
11 During the summer of 2024, the Denver Zoo started to see numbers of visitors drop by around
12 1,100 people a day.⁶⁰ The decrease in visitors to the Denver Zoo has been directly linked to the
13 increased heat in recent years.⁶¹

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18 ⁵⁵ *Id.*

19 ⁵⁶ Stephen Saunders, et al., Rocky Mountain Climate Organization, *Climate Projections in Summit County, Colorado*, 17 (Dec. 2021),
20 <https://static1.squarespace.com/static/5df11e0c4665f43b095e0016/t/648a59f81355a951bd28aad1686788603303/SummitProjectionsFinal.pdf>.

21 ⁵⁷ See, e.g., Olivia Prentzel, *Yes, it hasn’t snowed yet in Denver. But it’s Colorado’s meager snowpack that should worry you*, The Colorado Sun (Dec. 2, 2021), <https://coloradosun.com/2021/12/02/no-snow-denver-bad-mountain-snowpack/>.

22 ⁵⁸ Erica Siirila-Woodburn, U.S. Department of Energy, *What a Low-to-No-Snow Future Could Mean for the Western U.S.* (Oct. 26, 2021), <https://ess.science.energy.gov/highlight/what-a-low-to-no-snow-future-could-mean-for-the-western-u-s/>.

23 ⁵⁹ Emma VandenEinde, *Colorado’s ski resorts helped by elevation, but climate change hurts overall industry, study shows*, KUNC (March 12, 2024), <https://www.kunc.org/news/2024-03-12/colorados-ski-resorts-helped-by-elevation-but-climate-change-hurts-overall-industry-study-shows>.

24 ⁶⁰ Anusha Roy, *Climate change impacts some Colorado businesses that are now changing operations after revenue loss*, Denver 7 News (Oct. 25, 2024), <https://www.denver7.com/news/local-news/climate-change-impacts-some-colorado-businesses-that-are-now-changing-operations-after-revenue-loss>

25 ⁶¹ *Id.*

46. Animal species in Colorado have already felt the dire effects of climate change. For instance, climate change has forced certain ant species, unable to tolerate higher temperatures, out of their original habitats, leading to other ant species dominating the areas, resulting in less biodiversity.⁶² Some bird species in Colorado, including the yellow warbler, spotted towhee, and ducky flycatcher, have become scarcer due to water deficit and vulnerabilities due to the effects of climate change.⁶³

47. The Government Accountability Office has found that the average annual costs of severe weather-related power outages to U.S. utility customers is billions of dollars.⁶⁴ Infrastructure damage from climate change, such as to buildings and roads, has already cost Colorado billions.⁶⁵ Further, power outages can have an extremely negative impact on businesses and their revenue when businesses unexpectedly lose power and are unable to operate as expected.⁶⁶

48. In sum, climate change is having costly negative impacts on Colorado and reducing GHG emissions from the transportation sector is a key component of Colorado's

⁶² Yvaine Ye, *Ants in Colorado are on the move due to climate change*, CU Boulder Today (Apr. 10, 2024), <https://www.colorado.edu/today/2024/04/10/ants-colorado-are-move-due-climate-change>.

⁶³ National Park Service, *Localized Drought Impacts on Northern Colorado Plateau Landbirds* (last visited on May 1, 2025), https://www.nps.gov/articles/000/ncpn_birds-and-drought.htm.

⁶⁴ Testimony of Frank Rusco, Director, Natural Resources and Environment, Government Accountability Office, Before the U.S. Senate Committee on Environment and Public Works, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-reaching Effects and DOE and FERC Should Take Actions*, GAO-20423T, 3-4 (Mar. 10, 2021), <https://www.gao.gov/assets/gao-21-423t.pdf> (citing two government reports and one independent research report).

⁶⁵ See Colorado Energy Office, et al., *Colorado Climate Plan: State Level Policies and Strategies to Mitigate and Adapt*, 48-49 (2018), <https://dnrweblink.state.co.us/cwcb/0/doc/205387/Electronic.aspx?searchid=4fdc6e80-96ca-44b1-911c-57fe7793e3f6>; see also Scott Weiser, *Glenwood Canyon I-70 Closure Wreaks Havoc on Travel and the Economy*, Denver Gazette (Aug. 11, 2021), https://denvergazette.com/news/glenwood-canyon-i-70-closure-wreaks-havoc-on-travel-and-the-economy/article_46f10050-f896-11eb-b05a-03c4947b5863.html.

⁶⁶ See, e.g., Corbett Stevenson, *Power outages cost Boulder County businesses tens of thousands of dollars*, Denver Post (Apr. 8, 2024), <https://www.denverpost.com/2024/04/08/power-outages-cost-boulder-county-businesses-tens-of-thousands-of-dollars/>.

1 climate mitigation strategy. The loss of NEVI funding hinders Colorado's ability to mitigate
2 these impacts.
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6 I declare under penalty of perjury under the laws of the United States that, to the best of
7 my knowledge, the foregoing is true and correct.

8 DATED this 2 day of May, 2025, at Boulder, Colorado.
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10 *Will Toor*

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